

STATE OF MICHIGAN
COURT OF APPEALS

GILBERT MARC CHINITZ,

Plaintiff/Counter-Defendant-
Appellant/Cross-Appellee,

v

KAREN FAY CHINITZ,

Defendant/Counter-Plaintiff-
Appellee/Cross-Appellant.

UNPUBLISHED
September 23, 2010

No. 292346
Oakland Circuit Court
Family Division
LC No. 2007-731468-DO

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals as of right a stipulated order modifying the parties' judgment of divorce. Defendant cross-appeals. We affirm.

Plaintiff first argues that the trial court erred in not considering his voluntary assumption of care for Julie Chinitz, the parties' disabled adult daughter, in distributing the marital assets.¹ We disagree. In a divorce action, appellate review of the trial court's factual findings is limited to clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A factual finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake

¹ Defendant argues that plaintiff waived this and other issues for review on appeal because he agreed to the stipulated order to modify the judgment of divorce. In general, a court cannot modify property divisions reached by the consent of the parties and finalized in writing or on the record. See *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999); see also *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 556; 640 NW2d 256 (2002) (stating that one cannot appeal a consent judgment). In this case, however, the stipulated order did not modify the portions of the judgment of divorce plaintiff now challenges on appeal. In regard to findings of fact, plaintiff challenges the trial court's findings in the judgment of divorce, which arose out of the court's underlying opinion and order, and not the stipulated order. Because defendant has failed to show that plaintiff challenges matters stipulated by the parties, we cannot conclude that he has waived the issues raised on appeal.

has been made upon reviewing the entire record. *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court’s factual findings are upheld, then this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *McNamara v Horner (After Remand)*, 255 Mich App 667, 670; 662 NW2d 436 (2003). “A dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable.” *Id.*

“The distribution of property in a divorce is controlled by statute.” *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997), citing MCL 552.1 *et seq.* “The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances.” *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003). “The division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court.” *Id.* The trial court’s disposition of marital property is closely related to its findings of fact. *Id.* The following factors are used in the division of marital property:

- (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. [*Sparks*, 440 Mich at 159-160.]

However, “in a divorce action, the trial court lacks the authority ‘to compel a party to convey property or a property interest to a third person, even a child of the parties, or to adjudicate claims of third parties.’” *Reed v Reed*, 265 Mich App 131, 158; 693 NW2d 825 (2005) (citations omitted). Because the trial court lacked the legal authority to compel either party to convey marital property to a third party, the trial court did not err in concluding that it could not give or designate a portion of the marital assets to the parties’ disabled adult daughter. On appeal, plaintiff acknowledges that the law does not permit an order awarding a portion of the marital assets to his daughter. Instead, plaintiff argues that the court should have at least taken into account his voluntary assumption of care for his daughter when considering how to divide the marital assets, as such consideration is permissible when awarding spousal support. See *Parrish v Parrish*, 138 Mich App 546, 556-557; 361 NW2d 366 (1984). But plaintiff has not presented any authority supporting his assertion that such a factor should be considered in dividing marital property. Moreover, considering that both parties contributed to the accumulation of the marital assets, both assisted in the care of Julie, and both stated that they wished to continue assisting Julie after the divorce, the trial court’s dispositive ruling—that the marital assets would be split equally and each party could allocate any amount to Julie at their discretion—was equitable.

Plaintiff also argues that the trial court erred in not considering his voluntary assumption of care for Julie in determining spousal support. We disagree.

In Michigan, children over the age of majority are not eligible for support, regardless of whether the child can independently support himself. See *id.* at 555-556. However, a trial court *may* consider a parent’s voluntary assumption of care of an adult child in awarding spousal support. *Id.* at 556-557. The *Parrish* Court stated:

The absence of a legal obligation to support her handicapped daughter did not, however, preclude the circuit court's consideration of plaintiff's voluntarily assumed obligation for her daughter's support. In holding that a party's responsibility for the support of others is a factor to evaluate in awarding alimony, the Supreme Court impliedly recognized that 'responsibility' is not limited to 'legal responsibility'. After all, in awarding alimony, the courts always consider all types of factors that have nothing to do with legal obligations, *e.g.*, the parties' prior standard of living. [*Id.* (citation omitted).]

The object of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party, and spousal support must be based on what is just and reasonable under the circumstances of the case. *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). The following factors are used in the determination of spousal support:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Id.* at 726-727 (citation omitted).]

It appears the trial court, in its discretion, determined not to consider plaintiff's voluntary assumption of care in determining spousal support. Since *Parrish* permits the trial court to use its discretion in determining whether to consider the voluntary assumption by one party of a disabled adult child, it was not improper for the trial court not to consider plaintiff's voluntary assumption of care for Julie in determining the amount of spousal support to award defendant. Furthermore, both plaintiff and defendant testified that they would continue to support Julie in various ways, including monetarily, after the divorce. Since both parties voluntarily assumed the care of Julie, the trial court decided not to include the parties' voluntary assumption of care as a factor in its determination of spousal support. The trial court properly exercised its discretion in making its decision and its decision was equitable.

Lastly, plaintiff argues that the trial court erred in not considering the \$25,000 defendant stated she could make per year in determining spousal support. We disagree.

As previously discussed, the object of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party, and spousal support must be based on what is just and reasonable under the circumstances of the case. *Id.* at 726. The 14 factors set forth in *Berger* and listed above are used in the determination of the proper amount of spousal support. See *id.* at 726-727.

In the trial court's order and opinion, it stated:

Defendant suffers from health problems due to an automobile accident that occurred in December 2006. The accident resulted in her suffering a brain bleed,

ruptured spleen, twelve broken bones[,] and a urinary tract infection. Defendant's health problems will negatively affect her ability to obtain full time employment.

* * *

Based on the disparity of income of the parties, the Court finds that Plaintiff has the ability to pay spousal support to Defendant. Further, due to Defendant's health problems and her age, obtaining full time employment will be very difficult. Defendant has a need for spousal support at this time in her life.

The trial court properly exercised its discretion in declining to offset defendant's spousal support award by \$25,000. During trial, defendant testified that if she returned to work, she thought she could make about \$25,000 per year. However, defendant also testified that because of her health issues, she would have to find employment that did not require the use of her left shoulder. Given defendant's age and health problems, it was not clear error for the trial court to determine that such circumstances could negatively impact her ability to obtain gainful employment. Furthermore, throughout the marriage, defendant was primarily the homemaker and child raiser, while plaintiff earned the majority of the family's income. Thus, the trial court properly exercised its discretion in making its determination and the determination was equitable because the spousal support award reflected the relative situations of the parties.

On cross-appeal, defendant argues that the trial court erred in not equitably dividing the condominium purchased with marital funds. We disagree.

As previously discussed, "[t]he distribution of property in a divorce is controlled by statute." *Reeves*, 226 Mich App at 493. "A trial court must make specific findings of fact regarding the value of each disputed piece of marital property awarded to each party in the judgment." *Woodington v Shokoohi*, ___ Mich App ___; ___ NW2d ___ (Docket No. 288923, issued May 4, 2010), slip op p 6. A trial court's findings of fact are adequate if they are sufficiently specific to enable the parties to determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). For the purposes of dividing property, marital assets are typically valued at the time of trial or the time judgment is entered, although the trial court may, in its discretion, use a different date. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997). In distributing marital assets, the goal is to reach an equitable distribution of the property in light of all the circumstances, *Gates*, 256 Mich App at 423, and several factors are considered, see *Sparks*, 440 Mich at 159-160.

Although the rest of the marital assets, which primarily consisted of various accounts and the marital house, were all divided equally, the trial court awarded defendant the entirety of her jewelry collection and plaintiff "his interest" in the condominium. The trial court determined that the jewelry collection was marital property, and the parties stipulated that it was worth \$100,000. The court did not state whether the condominium was marital or separate property. The parties purchased the condominium in 2006 for \$229,000 as a place for Julie to reside. Although the condominium was purchased entirely with marital funds, it was titled in plaintiff and Julie's names as joint tenants with full rights of survivorship. There is nothing in the record indicating why defendant's name was not included on the title. While the trial court did not specifically state that the condominium was marital property, it is apparent that, for purposes of

dividing the marital estate, the court considered defendant to have a one-half interest in the condominium and treated that interest as marital property. The court stated that plaintiff was “awarded his interest in the” condominium and that defendant was “awarded her jewelry to compensate her for her interest in the condominium.” Considering that a one-half interest in the condominium, i.e., \$114,500,² was close to the stipulated value of defendant’s jewelry, i.e., \$100,000, the trial court’s distribution of the property was fair and equitable under the circumstances.³

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Jane M. Beckering

² \$114,500 represents one-half of the condominium’s purchase price of \$229,000. Plaintiff points out in his brief on appeal that the value of the condominium likely dropped substantially between the time that it was purchased in 2006 and the time that the trial court issued its opinion and order in 2008. But neither party has specifically challenged the court’s valuation of the property.

³ Defendant essentially asserts that the condominium should be considered marital property in its entirety and, therefore, that she is entitled to 50 percent of its total value. Defendant cites *Zalucha v Zalucha*, unpublished opinion per curiam of the Court of Appeals, issued November 1, 2002 (Docket No. 231441), for the proposition that the names on a deed are not controlling when dividing a marital estate. We note, however, that unlike the facts in *Zalucha*, plaintiff shared ownership of the condominium with his daughter, a non-party. The trial court was not at liberty to, in effect, invalidate a non-party’s interest in the condominium by treating it as marital property in its entirety.